

UNIVERSITY OF ESWATINI
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW

MAIN EXAMINATION PAPER, DECEMBER 2018

TITLE OF PAPER: LEGAL SYSTEMS

COURSE CODE: LAW 101

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS: ANSWER QUESTION 1, (WHICH IS COMPULSORY), AND ANY
THREE (3) OTHER QUESTIONS OF YOUR CHOICE.

TOTAL NUMBER OF QUESTIONS TO BE ANSWERED ARE FOUR.

DO NOT BE OPEN THE QUESTION PAPER UNTIL PERMISSION HAS BEEN GIVEN
BY THE CHIEF INVIGILATOR.

QUESTION ONE (COMPULSORY)

Central to the Hart-Devlin debate is the never-ending question whether the law, as a social control, should be used to enforce morals. In other words, is law to be used to make criminal certain human behavior regarded by segments of society as a sin or morally wrong? In this regard, reference is being made to the English case of *Shaw v The Director of Public Prosecutions* [1961] 2 All E.R. 446 (HL) which it is assumed you have read and are familiar with its facts and conclusion.

Basing your argument on the Wolfenden Report, and the debate that followed between the two legal titans (Lord Devlin and Professor Hart), discuss how the debate presented itself in the case of *Shaw v The DPP*, as competing with the law. Take a position and indicate whether you agree or disagree with the conclusion reached. Avoid a lengthy repetition of the facts of the case.

[25 marks]

QUESTION TWO

Besides law, in the strict sense, there are other normative systems by which society regulates the conduct of human beings.

- a) State two of these other normative systems. [5 marks]
- b) What are the two commonalities these share with law *stricto sensu*? [10 marks]
- c) What truly distinguishes or sets them apart from law *stricto sensu*? [10 marks]

[25 marks]

QUESTION THREE

The 2005 Constitution of the Kingdom of Eswatini proclaims itself as supreme in the hierarchy or order of laws in the country. Discuss how the Constitution regards and controls the other sources of law in Eswatini.

[25 marks]

QUESTION FOUR

Write short explanatory notes on the following:

- a) A normative system. [5 marks]
- b) Duty of care. [5 marks]

c) Morality. [5 marks]

d) Justice. [5 marks]

e) Ethics. [5 marks]

[Total marks:25]

QUESTION FIVE

Pick one of the cases that illustrates how, in an instance where there has been a killing or death of a human being, the law will (as a social control) step in to enforce its authority. The cases are Regina v Dudley and Stephens 14 Q. B. D. 273 (1884); R v Betty Motsa 1970 – 1976 S. L. R. 200 (HC); and Rex v Mbombela 1933 AD 269.

Of the case you have chosen, discuss what had happened, how the court decided, and its reason for so deciding.

[25 marks]